



February 28, 2003

HOUSE BILL No. 1599

DIGEST OF HB 1599 (Updated February 27, 2003 8:39 AM - DI 51)

Citations Affected: IC 6-2.5; noncode.

Synopsis: Sales tax exemption for hobby related sales. Provides that an individual who sells tangible personal property is not liable for collecting and remitting the state gross retail tax or registering a retail merchant if the sales: (1) are not made in the course of the person's regular business; (2) are not conducted during more than 30 days in a calendar year; and (3) generate less than \$1,200 in gross receipts during a calendar year. Allows a person qualifying for the exemption to obtain a de minimis seller's certificate from the department of state revenue. Provides that the issuance of a de minimis seller's certificate serves as prima facie proof that the person qualifies for the exemption. Provides that if a person who qualifies for the exemption receives \$1,200 or more in gross receipts during a calendar year, the person must remit to the department an amount equal to 6% of the total gross receipts for the calendar year.

Effective: Upon passage; January 1, 2004.

Reske, Dvorak, Austin, Chowning

January 16, 2003, read first time and referred to Committee on Ways and Means.
February 27, 2003, reported — Do Pass.

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HB 1599—LS 7361/DI 101+



February 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1599

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 1. (a) **Except as**
3 **provided in section 2.5 of this chapter**, a person is a retail merchant
4 making a retail transaction when he engages in selling at retail.

5 (b) A person is engaged in selling at retail when, in the ordinary
6 course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~
7 **the person:**

8 (1) acquires tangible personal property for the purpose of resale;
9 and

10 (2) transfers that property to another person for consideration.

11 (c) For purposes of determining what constitutes selling at retail, it
12 does not matter whether:

13 (1) the property is transferred in the same form as when it was
14 acquired;

15 (2) the property is transferred alone or in conjunction with other
16 property or services; or

17 (3) the property is transferred conditionally or otherwise.

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(d) Notwithstanding subsection (b), a person is not selling at retail if ~~he~~ **the person** is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food or beverages furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food or beverages when the purchaser pays the charges.

SECTION 2. IC 6-2.5-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 2. (a) **Except as provided in section 2.5 of this chapter**, a person is a retail merchant making a retail transaction when he is making wholesale sales.

(b) For purposes of this section, a person is making wholesale sales when he:

(1) sells tangible personal property, other than capital assets or depreciable property, to a person who purchases the property for the purpose of reselling it without changing its form;

(2) sells tangible personal property to a person who purchases the property for direct consumption as a material in the direct



production of other tangible personal property produced by the person in his business of manufacturing, processing, refining, repairing, mining, agriculture, or horticulture;

(3) sells tangible personal property to a person who purchases the property for incorporation as a material or integral part of tangible personal property produced by the person in his business of manufacturing, assembling, constructing, refining, or processing;

(4) sells drugs, medical or dental preparations, or other similar materials to a person who purchases the materials for direct consumption in professional use by a physician, hospital, embalmer, funeral director, or tonsorial parlor;

(5) sells tangible personal property to a person who purchases the property for direct consumption in his business of industrial cleaning; or

(6) sells tangible personal property to a person who purchases the property for direct consumption in the person's business in the direct rendering of public utility service.

(c) Notwithstanding any provision of this article, a person is not making a retail transaction when he:

(1) acquires tangible personal property owned by another person;

(2) provides industrial processing or servicing, including enameling or plating, on the property; and

(3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

SECTION 3. IC 6-2.5-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 2.5. (a) This section applies to a person if the following conditions apply:**

(1) The person is an individual.

(2) The person engages in activities that:

(A) are described in section 1(b) or 2(b)(1) of this chapter; and

(B) are not performed in the ordinary course of the person's regularly conducted trade or business.

Activities described in this subdivision include activities performed in connection with a hobby or leisure activity.

(3) The person does not engage in the activities described in subdivision (2) during more than thirty (30) days in a calendar year.

(4) The activities described in subdivision (2) will generate



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gross receipts of less than one thousand two hundred dollars (\$1,200) during a calendar year.

(5) The person is not required to obtain a transient merchant license under IC 25-37-1.

(b) A person to whom this section applies is not a retail merchant making a retail transaction and is not required to:

(1) collect and remit the state gross retail tax under IC 6-2.5-6; or

(2) apply for a registered retail merchant's certificate under IC 6-2.5-8-1.

(c) A person to whom this section applies may register with the department as a seller of property in de minimis transactions as provided in IC 6-2.5-8-4.5.

(d) If a person to whom this section applies engages in activities described in subsection (a) that generate gross receipts of at least one thousand two hundred dollars (\$1,200) during a calendar year, the person shall:

(1) notify the department, in the manner and on a form prescribed by the department, of the amount of gross receipts generated by the activities described in subsection (a) during the calendar year; and

(2) remit to the department an amount equal to the product of:

(A) six percent (6%); multiplied by

(B) the total gross receipts generated by the activities described in subsection (a) during the calendar year.

(e) The department may adopt rules under IC 4-22-2 to implement this section and may allow a person required to report and remit any amount under subsection (d) to do so in conjunction with the filing of a return under IC 6-3-4 for the adjusted gross income tax.

SECTION 4. IC 6-2.5-8-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4.5. (a) A person described in IC 6-2.5-4-2.5 may register with the department as a seller of property in de minimis transactions. A person wishing to register under this section must file an application, in the manner and on a form prescribed by the department, listing the following:

(1) The person's name.

(2) The person's residence address.

(3) A description of the tangible personal property to be sold, including the approximate value of the property to be sold.



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(4) The period during the calendar year in which the transactions will take place.

(5) The location from which the transactions will occur.

(6) Any other information the department requires.

The department may not require the person to file a fee in connection with the application under this section.

(b) Upon receiving the application, the department may issue a de minimis seller's certificate containing a serial number and the name of the person for whom it is issued. The issuance of a certificate under this section serves as prima facie proof that the certificate holder is not a retail merchant making a retail transaction and is not required to:

(1) collect and remit the state gross retail tax under IC 6-2.5-6, except as may be required under IC 6-2.5-4-2.5(d); or

(2) apply for a registered retail merchant's certificate under IC 6-2.5-8-1.

(c) The department may adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 6-2.5-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 5. A certificate issued under section 1, 3, or 4 of this chapter is valid so long as the business or exempt organization is in existence. **A certificate issued under section 4.5 of this chapter is valid unless the certificate is revoked under section 7(g) of this chapter.**

SECTION 6. IC 6-2.5-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, ~~or 4, or 4.5~~ of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection.

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:

(1) file the returns required by IC 6-2.5-6-1; or

(2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

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(1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and

(2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.

(d) The statement filed under subsection (c) must state that:

(1) information obtained by the board, bureau, or commission under IC 6-8.1-7-1 indicates that the certificate holder has not complied with IC 6-9; and

(2) the board, bureau, or commission has determined that significant harm will result to the county from the certificate holder's failure to comply with IC 6-9.

(e) The department shall revoke or suspend a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the certificate holder owes taxes, penalties, fines, interest, or costs due under IC 6-1.1 that remain unpaid at least sixty (60) days after the due date under IC 6-1.1; and

(2) the treasurer of the county to which the taxes are due requests the department to revoke or suspend the certificate.

(f) The department shall reinstate a certificate suspended under subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid or the county treasurer requests the department to reinstate the certificate because an agreement for the payment of taxes and any penalties due under IC 6-1.1 has been reached to the satisfaction of the county treasurer.

(g) The department may, for good cause, revoke a certificate issued under section 4.5 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the department determines that the certificate holder no longer qualifies for the exemption provided by IC 6-2.5-4-2.5; or

(2) the department determines that the certificate holder is required to file a report with and remit money to the department under IC 6-2.5-4-2.5(d), and the certificate holder fails to do so in the manner or by the time required by the department.

SECTION 7. [EFFECTIVE JANUARY 1, 2004] (a) IC 6-2.5-4-2.5, as added by this act, applies to transactions conducted by a person described in IC 6-2.5-4-2.5(a), as added by this act, after December 31, 2003.

(b) A person described in IC 6-2.5-4-2.5(a), as added by this act, may apply to the department of state revenue for a de minimis



1 seller's certificate under IC 6-2.5-8-4.5, as added by this act, after
2 December 31, 2003, for transactions described in IC 6-2.5-4-2.5(a),
3 as added by this act, conducted by the person in a calendar year
4 that begins after December 31, 2003.

5 SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this
6 SECTION, "department" refers to the department of state
7 revenue.

8 (b) Notwithstanding IC 6-2.5-4-2.5 and IC 6-2.5-8-4.5, both as
9 added by this act, the department shall adopt any rules to
10 implement IC 6-2.5-4-2.5 or IC 6-2.5-8-4.5, both as added by this
11 act, in the same manner as emergency rules are adopted under
12 IC 4-22-2-37.1. Any rules adopted under this SECTION must be
13 adopted not later than September 1, 2003. A rule adopted under
14 this SECTION expires on the earlier of:

- 15 (1) the date a rule is adopted by the department under
16 IC 4-22-2-24 through IC 4-22-2-36 to implement
17 IC 6-2.5-4-2.5 or IC 6-2.5-8-4.5, both as added by this act; or
18 (2) January 1, 2005.

19 (c) This SECTION expires January 1, 2005.

20 SECTION 9. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1599, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CRAWFORD, Chair

Committee Vote: yeas 22, nays 0.

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